

government's need to govern, provide for the common good, and serve a broader societal purpose. For example, the Supreme Court has upheld the constitutionality of the death penalty, ruling that the Eighth Amendment does not prevent a person from being put to death for committing a capital crime and that the government may consider "retribution and the possibility of deterrence" when it seeks capital punishment for a crime that so warrants it.<sup>21</sup> In other words, there is a greater good—more safety and security—that may be more important than sparing the life of an individual who has committed a heinous crime.

Yet the Court has also put limits on the ability to impose the death penalty, ruling, for example, that the government may not execute a person with cognitive disabilities, a person who was under eighteen at the time of the crime, or a child rapist who did not kill his victim.<sup>22</sup> So the job of the courts on any given issue is never quite done, as justices continuously keep their eye on government laws, actions, and policy changes as cases are brought to them and then decide whether those laws, actions, and policies can stand or must go. Even with an issue such as the death penalty, about which the Court has made several rulings, there is always the possibility that further judicial interpretation of what does (or does not) violate the Constitution will be needed.

This happened, for example, as recently as 2015 in a case involving the use of lethal injection as capital punishment in the state of Oklahoma, where death-row inmates are put to death through the use of three drugs—a sedative to bring about unconsciousness (midazolam), followed by two others that cause paralysis and stop the heart. A group of these inmates challenged the use of midazolam as unconstitutional. They argued that since it could not reliably cause unconsciousness, its use constituted an Eighth Amendment violation against cruel and unusual punishment and should be stopped by the courts. The Supreme Court rejected the inmates' claims, ruling that Oklahoma could continue to use midazolam as part of its three-drug protocol.<sup>23</sup> But with four of the nine justices dissenting from that decision, a sharply divided Court leaves open a greater possibility of more death-penalty cases to come. The 2015–2016 session alone includes four such cases, challenging death-sentencing procedures in such states as Florida, Georgia, and Kansas.<sup>24</sup>

Therefore, we should not underestimate the power and significance of the judicial branch in the United States. Today, the courts have become a relevant player, gaining enough clout and trust over the years to take their place as a separate yet coequal branch.

## 13.2 The Dual Court System

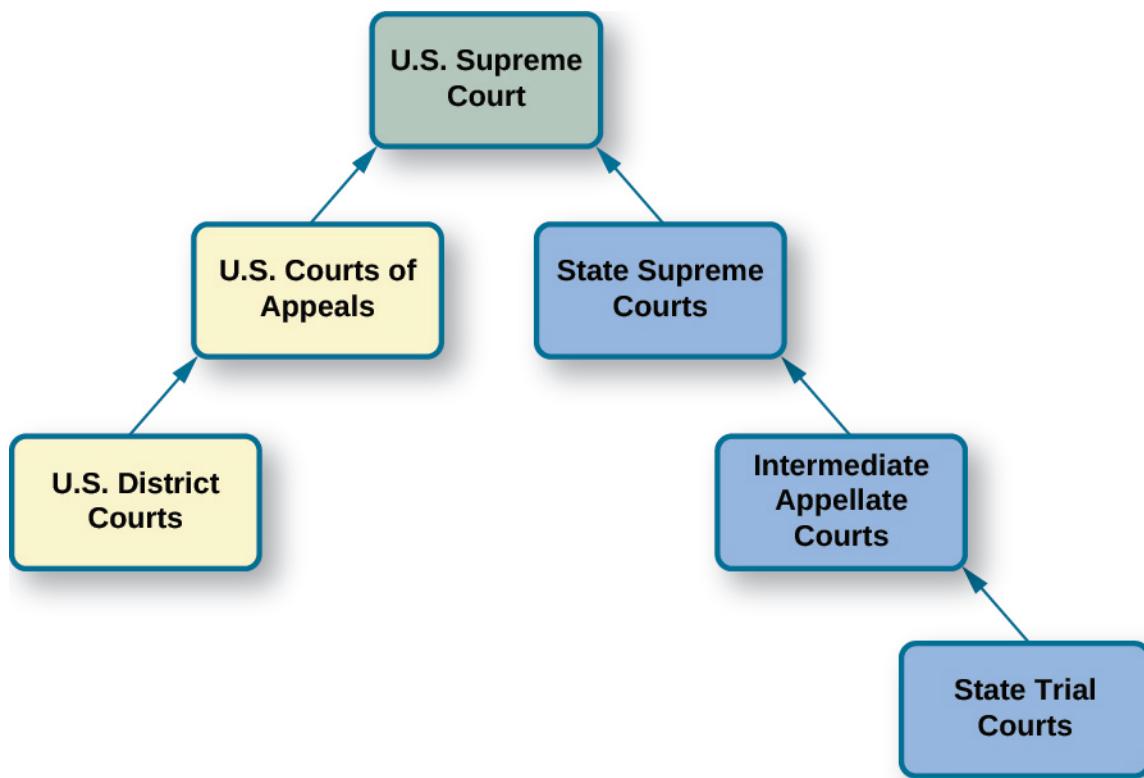
---

### Learning Objectives

By the end of this section, you will be able to:

- Describe the dual court system and its three tiers
  - Explain how you are protected and governed by different U.S. court systems
  - Compare the positive and negative aspects of a dual court system
- 

Before the writing of the U.S. Constitution and the establishment of the permanent national judiciary under Article III, the states had courts. Each of the thirteen colonies had also had its own courts, based on the British common law model. The judiciary today continues as a **dual court system**, with courts at both the national and state levels. Both levels have three basic tiers consisting of **trial courts**, **appellate courts**, and finally courts of last resort, typically called supreme courts, at the top (**Figure 13.4**).



**Figure 13.4** The U.S. judiciary features a dual court system comprising a federal court system and the courts in each of the fifty states. On both the federal and state sides, the U.S. Supreme Court is at the top and is the final court of appeal.

To add to the complexity, the state and federal court systems sometimes intersect and overlap each other, and no two states are exactly alike when it comes to the organization of their courts. Since a state's court system is created by the state itself, each one differs in structure, the number of courts, and even name and jurisdiction. Thus, the organization of state courts closely resembles but does not perfectly mirror the more clear-cut system found at the federal level.<sup>25</sup> Still, we can summarize the overall three-tiered structure of the dual court model and consider the relationship that the national and state sides share with the U.S. Supreme Court, as illustrated in **Figure 13.4**.

Cases heard by the U.S. Supreme Court come from two primary pathways: (1) the circuit courts, or U.S. courts of appeals (after the cases have originated in the federal district courts), and (2) state supreme courts (when there is a substantive federal question in the case). In a later section of the chapter, we discuss the lower courts and the movement of cases through the dual court system to the U.S. Supreme Court. But first, to better understand how the dual court system operates, we consider the types of cases state and local courts handle and the types for which the federal system is better designed.

## COURTS AND FEDERALISM

Courts hear two different types of disputes: criminal and civil. Under **criminal law**, governments establish rules and punishments; laws define conduct that is prohibited because it can harm others and impose punishment for committing such an act. Crimes are usually labeled felonies or misdemeanors based on their nature and seriousness; felonies are the more serious crimes. When someone commits a criminal act, the government (state or national, depending on which law has been broken) charges that person with a crime, and the case brought to court contains the name of the charging government, as in *Miranda v. Arizona* discussed below.<sup>26</sup> On the other hand, **civil law** cases involve two or more private (non-government) parties, at least one of whom alleges harm or injury committed by the other. In both criminal

and civil matters, the courts decide the remedy and resolution of the case, and in all cases, the U.S. Supreme Court is the final court of appeal.

### Link to Learning

This site provides an interesting challenge: Look at the **different cases presented** (<https://openstax.org/l/29stcrtvsfedcrt>) and decide whether each would be heard in the state or federal courts. You can check your results at the end.

Although the Supreme Court tends to draw the most public attention, it typically hears fewer than one hundred cases every year. In fact, the entire federal side—both trial and appellate—handles proportionately very few cases, with about 90 percent of all cases in the U.S. court system being heard at the state level.<sup>27</sup> The several hundred thousand cases handled every year on the federal side pale in comparison to the several million handled by the states.

State courts really are the core of the U.S. judicial system, and they are responsible for a huge area of law. Most crimes and criminal activity, such as robbery, rape, and murder, are violations of state laws, and cases are thus heard by state courts. State courts also handle civil matters; personal injury, malpractice, divorce, family, juvenile, probate, and contract disputes and real estate cases, to name just a few, are usually state-level cases.

The federal courts, on the other hand, will hear any case that involves a foreign government, patent or copyright infringement, Native American rights, maritime law, bankruptcy, or a controversy between two or more states. Cases arising from activities across state lines (interstate commerce) are also subject to federal court jurisdiction, as are cases in which the United States is a party. A dispute between two parties not from the same state or nation and in which damages of at least \$75,000 are claimed is handled at the federal level. Such a case is known as a diversity of citizenship case.<sup>28</sup>

However, some cases cut across the dual court system and may end up being heard in both state and federal courts. Any case has the potential to make it to the federal courts if it invokes the U.S. Constitution or federal law. It could be a criminal violation of federal law, such as assault with a gun, the illegal sale of drugs, or bank robbery. Or it could be a civil violation of federal law, such as employment discrimination or securities fraud. Also, any perceived violation of a liberty protected by the Bill of Rights, such as freedom of speech or the protection against cruel and unusual punishment, can be argued before the federal courts. A summary of the basic jurisdictions of the state and federal sides is provided in **Table 13.2**.

**Jurisdiction of the Courts: State vs. Federal**

State Courts	Federal Courts
Hear most day-to-day cases, covering 90 percent of all cases	Hear cases that involve a “federal question,” involving the Constitution, federal laws or treaties, or a “federal party” in which the U.S. government is a party to the case
Hear both civil and criminal matters	Hear both civil and criminal matters, although many criminal cases involving federal law are tried in state courts
Help the states retain their own sovereignty in judicial matters over their state laws, distinct from the national government	Hear cases that involve “interstate” matters, “diversity of citizenship” involving parties of two different states, or between a U.S. citizen and a citizen of another nation (and with a damage claim of at least \$75,000)

**Table 13.2**

While we may certainly distinguish between the two sides of a jurisdiction, looking on a case-by-case basis will sometimes complicate the seemingly clear-cut division between the state and federal sides. It is always possible that issues of federal law may start in the state courts before they make their way over to the federal side. And any case that starts out at the state and/or local level on state matters can make it into the federal system on appeal—but only on points that involve a federal law or question, and usually after all avenues of appeal in the state courts have been exhausted.<sup>29</sup>

Consider the case *Miranda v. Arizona*.<sup>30</sup> Ernesto Miranda, arrested for kidnapping and rape, which are violations of state law, was easily convicted and sentenced to prison after a key piece of evidence—his own signed confession—was presented at trial in the Arizona court. On appeal first to the Arizona Supreme Court and then to the U.S. Supreme Court to exclude the confession on the grounds that its admission was a violation of his constitutional rights, Miranda won the case. By a slim 5–4 margin, the justices ruled that the confession had to be excluded from evidence because in obtaining it, the police had violated Miranda's Fifth Amendment right against self-incrimination and his Sixth Amendment right to an attorney. In the opinion of the Court, because of the coercive nature of police interrogation, no confession can be admissible unless a suspect is made aware of his rights and then in turn waives those rights. For this reason, Miranda's original conviction was overturned.

Yet the Supreme Court considered only the violation of Miranda's constitutional rights, but not whether he was guilty of the crimes with which he was charged. So there were still crimes committed for which Miranda had to face charges. He was therefore retried in state court in 1967, the second time without the confession as evidence, found guilty again based on witness testimony and other evidence, and sent to prison.

Miranda's story is a good example of the tandem operation of the state and federal court systems. His guilt or innocence of the crimes was a matter for the state courts, whereas the constitutional questions raised by his trial were a matter for the federal courts. Although he won his case before the Supreme Court, which established a significant precedent that criminal suspects must be read their so-called Miranda rights before police questioning, the victory did not do much for Miranda himself. After serving prison time, he was stabbed to death in a bar fight in 1976 while out on parole, and due to a lack of evidence, no one was ever convicted in his death.

## THE IMPLICATIONS OF A DUAL COURT SYSTEM

From an individual's perspective, the dual court system has both benefits and drawbacks. On the plus side, each person has more than just one court system ready to protect his or her rights. The dual court system provides alternate venues in which to appeal for assistance, as Ernesto Miranda's case illustrates. The U.S. Supreme Court found for Miranda an extension of his Fifth Amendment protections—a constitutional right to remain silent when faced with police questioning. It was a right he could not get solely from the state courts in Arizona, but one those courts had to honor nonetheless.

The fact that a minority voice like Miranda's can be heard in court, and that his or her grievance can be resolved in his or her favor if warranted, says much about the role of the judiciary in a democratic republic. In Miranda's case, a resolution came from the federal courts, but it can also come from the state side. In fact, the many differences among the state courts themselves may enhance an individual's potential to be heard.

State courts vary in the degree to which they take on certain types of cases or issues, give access to particular groups, or promote certain interests. If a particular issue or topic is not taken up in one place, it may be handled in another, giving rise to many different opportunities for an interest to be heard somewhere across the nation. In their research, Paul Brace and Melinda Hall found that state courts are important instruments of democracy because they provide different alternatives and varying arenas for political access. They wrote, "Regarding courts, one size does not fit all, and the republic has survived in part because federalism allows these critical variations."<sup>31</sup>

But the existence of the dual court system and variations across the states and nation also mean that there

are different courts in which a person could face charges for a crime or for a violation of another person's rights. Except for the fact that the U.S. Constitution binds judges and justices in all the courts, it is state law that governs the authority of state courts, so judicial rulings about what is legal or illegal may differ from state to state. These differences are particularly pronounced when the laws across the states and the nation are not the same, as we see with marijuana laws today.

## Finding a Middle Ground

## Marijuana Laws and the Courts

There are so many differences in marijuana laws between states, and between the states and the national government, that uniform application of treatment in courts across the nation is nearly impossible (**Figure 13.5**). What is legal in one state may be illegal in another, and state laws do not cross state geographic boundary lines—but people do. What's more, a person residing in any of the fifty states is still subject to federal law.



**Figure 13.5** Marijuana laws vary remarkably across the fifty states. In many states, marijuana use is illegal, as it is under federal law, but some states have decriminalized it, some allow it for medicinal use, and some have done both. Marijuana is currently legal for recreational use in ten states.

For example, a person over the age of twenty-one may legally buy marijuana for recreational use in ten states and for medicinal purpose in more than half the states, but could face charges—and time in court—for possession in a neighboring state where marijuana use is not legal. Under federal law, too, marijuana is still regulated as a Schedule 1 (most dangerous) drug, and federal authorities often find themselves pitted against states that have legalized it. Such differences can lead, somewhat ironically, to arrests and federal criminal charges for people who have marijuana in states where it is legal, or to federal raids on growers and dispensaries that would otherwise be operating legally under their state's law.

Differences among the states have also prompted a number of lawsuits against states with legalized marijuana, as people opposed to those state laws seek relief from (none other than) the courts. They want the courts to resolve the issue, which has left in its wake contradictions and conflicts between states that have legalized marijuana and those that have not, as well as conflicts between states and the national government. These lawsuits include at least one filed by the states of Nebraska and Oklahoma against Colorado. Citing concerns over cross-border trafficking, difficulties with law enforcement, and violations of the Constitution's supremacy clause, Nebraska and Oklahoma have petitioned the U.S. Supreme Court to intervene and rule on the legality of Colorado's marijuana law, hoping to get it overturned.<sup>32</sup> The Supreme Court has yet to take up the case.